IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2885 OF 2003

ALONG WITH

NOTICE OF MOTION NO. 76 OF 2004

IN

SUMMARY SUIT NO. 987 OF 2003

Mr. Ajaykumar Tiwari ..Plaintiff

versus

Mr. Badriprasad R. Pandey ..Defendant

Mr. G. H. Shukla i/b. M/s. G. H. Shukla for the Plaintiff.

Mr. Udaipuri i/b. M/s. Udaipuri & Co. for the Defendant.

CORAM : D. G. DESHPANDE,J.

DATE : 24TH SEPTEMBER, 2004.

P.C. :

1. Notice of Motion No. 2885 of 2003 is taken out by the plaintiff for attachment of the defendant's property before Judgment under Order 38 Rule 5 of CPC. Ad interim injunction was granted in favour of the plaintiff. Defendant has taken out Notice of Motion No.76 of 2004 for vacating the ad interim order.

2. The suit of the plaintiff is for recovery of sum of Rs.6 lacs and apprehending that the defendant will dispose of the entire property, the plaintiff took out notice of motion and filed supporting affidavit of one Shreeram R. Tiwari. Counsel for the defendant urged that the affidavit of Shreeram R. Tiwari is bogus and frivolous and that it does not make out any case for attachment and no case for injunction is made out. He contended that it was the Defendant's wife who has purchased the entire property and for that purpose he has tendered a copy of the agreement of sale dated 30.3.1997. On these submissions about property standing in the name of wife was made, I had given an opportunity to the Advocate for the defendant to make an affidavit in that regard giving all the particulars. He was also warned that if he does not make any affidavit then at the end of the matter he will not be permitted to do so. In the affidavit filed by the defendant in his notice of motion and the supporting affidavit there is no mention of this document. No mention of any fact as to how the property was purchased by the wife, from which funds, what was her income, what was her source of income and even then in the absence of any affidavit he wants the court to accept this case which cannot be simply done. Therefore the entire defence of the defendant is without any basis. It may be that the plaintiff has

not made out any case for attachment before judgment but the ad interim injunction granted to him has to be confirmed. It is made absolute. Both the notices of motion are disposed of.

. Certified copy expedited.

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